

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

DANTAE JACQUES,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 214 EDA 2015

Appeal from the Judgment of Sentence July 21, 2014  
In the Court of Common Pleas of Philadelphia County  
Criminal Division at No(s): CP-51-CR-0000963-2013

BEFORE: BOWES, OLSON AND STRASSBURGER,\* JJ.

MEMORANDUM BY BOWES, J.:

**FILED AUGUST 16, 2016**

Dantae Jacques appeals his judgment of sentence of life in prison without the possibility of parole following a jury trial where he was convicted of second-degree murder, attempted murder, two counts of robbery, aggravated assault, and possession of an instrument of crime. We affirm.

The Commonwealth adduced the following evidence at trial. On October, 18, 2012, Appellant arranged to purchase one pound of marijuana from the victim, Raviya Roeth. Appellant entered the backseat of a car driven by Mr. Roeth at a predetermined location, while another individual, Jony Sam, sat in the passenger seat.

From the rear seat of the vehicle, Appellant fatally shot Mr. Roeth, and severely injured Mr. Sam, who sustained injuries to his neck, wrist, and

\* Retired Senior Judge assigned to the Superior Court.

the side of his face. Appellant unlocked the trunk of the car and stole the marijuana. He then fled the scene of the crime.

Subsequently, a search warrant for Appellant's residence was issued. Officers executed the warrant at 6 a.m. on November 7, 2012, and seized a large quantity of marijuana and a scale. Appellant was placed under arrest and transferred to the Philadelphia homicide unit. He remained in an interrogation room with suspects from other investigations throughout the course of that day, and the next. During this interval, Appellant was provided with breakfast, cheese sandwiches, beverages, and a cheesesteak. He had access to a bathroom and slept in the interrogation room.

Detective Brian Peters spoke with Appellant numerous times while he remained in police custody. At approximately 4 p.m. on November 7, 2012, Detective Peters informed Appellant of his ***Miranda***<sup>1</sup> rights. Appellant did not request an attorney at this time, but chose to speak with the detective, who memorialized their conversation with handwritten notes. Later that evening, Appellant again waived his rights, and the detective conducted a formal interview. Detective Peters created a written statement based on Appellant's statements, which Appellant reviewed and signed. The interview ended at 12:32 a.m. on November 8, 2012.

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<sup>1</sup> ***Miranda v. Arizona***, 384 U.S. 436 (1966).

Following this interview, Detective Peters investigated the averments attested to by Appellant in his statement. Noting inconsistencies in that statement, Detective Peters conducted a second interview with Appellant during the morning and early afternoon of November 8, 2012. Appellant once again waived his rights and confessed, in a written statement, to the shootings of Mr. Roeth and Mr. Sam.

Appellant filed a pre-trial motion to suppress his confession. A hearing was held on July 3, 2014, and the court denied Appellant's motion. A trial ensued, wherein a jury convicted Appellant of the abovementioned crimes, and the court sentenced him to life in prison without parole. Appellant filed a timely post-sentence motion, which was denied by operation of law, and a timely notice of appeal. Appellant complied with an order to file a Rule 1925(b) statement of matters complained of on appeal. The trial court then filed its Rule 1925(a) opinion. Appellant offers four issues for our review:

1. Did [the trial court] err in not suppressing [Appellant's] statement based on the fact it was not voluntarily made, but the result of coercion and the product of being held for an extended period of time without sleeping arrangements or adequate food or drink? Was the statement the product of coercion when [Appellant] was arrested on November 7<sup>th</sup> at 6:00 a.m. and taken to the homicide division at 8:00 a.m. and was held in a homicide investigation room until the statement was actually made on November 8<sup>th</sup> between 11:30 a.m. to 2:05 p.m., when he was given no food or sleeping accommodations during that time period, particularly when [Appellant] already gave an alibi statement? Was [Appellant's] statement in violation of his Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution? Further, did the police ignore [Appellant's] requests for counsel

in violation of the Sixth Amendment of the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution?

2. Did the District Attorney violate the court's order, when [Appellant's] statement was published to the jury about being a drug dealer and selling drugs in West Chester when the District Attorney inadvertently put the offending portions of the statement on the screen when she was questioning [Appellant] about his statement before the jury? Was the fact the curative instruction given not enough? Did this violation of the court's order prohibiting bringing unrelated bad acts to the jury, denying [Appellant's] right to a fair trial?
3. Did [the trial court] err in allowing the Commonwealth to introduce evidence at the time of his arrest on November 7<sup>th</sup> that marijuana was found at his house when this marijuana had no connection to the case in question? Did this result in an unrelated bad act, tainting [Appellant] and denying him his right to due process and a fair trial?
4. Were the verdicts for murder of the second degree, robbery, attempted murder, aggravated assault, robbery and possessing an instrument of crime, against the weight of the evidence?

Appellant's brief at 5-7.

Appellant's first claim pertains to the denial of his motion to suppress.

Our standard of review of a suppression court's denial of a suppression motion is well-settled. We are limited to

determining whether the factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. [Since] the prosecution prevailed in the suppression court, we may consider only the evidence of the prosecution and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the record supports the factual findings of the trial court, we are bound by those facts and may reverse only if the legal conclusions drawn therefrom are in error.

***Commonwealth v. Postie***, 110 A.3d 1034, 1039 (Pa.Super. 2015) (citation omitted).

Appellant contends that his confession was the product of coercion, and elicited in violation of his right to counsel. When a claim is raised that a statement made to police was not freely and voluntarily provided, we are guided by the following non-exclusive list of factors in assessing totality of the circumstances:

the duration and means of interrogation, including whether questioning was repeated, prolonged, or accompanied by physical abuse or threats thereof; the length of the accused's detention prior to the confession; whether the accused was advised of his or her constitutional rights; the attitude exhibited by the police during the interrogation; the accused's physical and psychological state, including whether he or she was injured, ill, drugged, or intoxicated; the conditions attendant to the detention, including whether the accused was deprived of food, drink, sleep, or medical attention; the age, education, and intelligence of the accused; the experience of the accused with law enforcement and the criminal justice system; and any other factors which might serve to drain one's powers of resistance to suggestion and coercion.

***Commonwealth v. Bryant***, 67 A.3d 716, 724 (Pa. 2013) (citation omitted).

Appellant argues that being detained for twenty-nine hours without food, water, or proper sleeping accommodations suggests his statements were coerced. In addition, he maintains that he repeatedly asked for counsel, and that he waived his ***Miranda*** rights as a result of the coercive conditions. The suppression court ruled that, based on the totality of the circumstances,

the statements given were voluntary and that there were no violations of Appellant's **Miranda** rights. Suppression Hearing, 7/3/14, at 228.

We agree with the suppression court's assessment. Detective Peters testified that he provided Appellant the **Miranda** warnings on three separate occasions, and Appellant acknowledged those rights, including his right to counsel, every time. Nevertheless, Appellant chose to waive his rights and to cooperate with the police investigation. N.T. Suppression, 7/3/14, at 40-42; 50; 64.

Furthermore, Appellant had access to cheese sandwiches, beverages, and a bathroom throughout his detention. **Id.** at 55-56; 85-86. Detective Peters personally provided Appellant with breakfast and a cheesesteak on November 8, 2012. **Id.** at 83; 85. Appellant also slept in the interview room. **Id.** at 56-57; 144. Based on our review of the record, we find the suppression court's factual findings are supported by the record and free of legal error.<sup>2</sup> Accordingly, we affirm the trial court's denial of Appellant's

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<sup>2</sup> We have carefully reviewed and considered Appellant's argument that his confession was coerced. While the record supports the finding that Appellant had access to a warm room, basic necessities, and was provided food and drink, the record lacks the chronological precision of when these various events occurred over the approximately thirty-six hours Appellant was held in a room lacking any kind of bed or pillows. Nevertheless, we are bound by the factual and credibility findings of the trial court since they are supported by the record, and, in the absence of evidence to the contrary, we cannot find that the circumstances herein drained Appellant's powers of resistance to suggestion and coercion. **Bryant, supra** at 724.

suppression motion. **See Commonwealth v. Bryant**, 67 A.3d 716 (Pa.Super. 2013) (affirming denial of suppression of statements made by suspect held for thirty-four hours with food, drink, access to a bathroom, and who was read his **Miranda** rights prior to making statement).

Appellant next argues that the trial court erred in failing to grant a mistrial when the Commonwealth inadvertently displayed on a projection screen statements made by Appellant referencing his history of dealing marijuana. Appellant moved for a mistrial immediately after the statement appeared on screen. N.T. Trial, 7/18/14, at 164. He asserts that the curative instruction provided by the court failed to cure the prejudice caused by the Commonwealth's reference to the prior bad acts. Hence, Appellant concludes, this Court should grant a new trial.

A trial court is granted broad discretion in ruling on a motion for mistrial. The judge must discern

whether misconduct or prejudicial error actually occurred, and if so, . . . assess the degree of any resulting prejudice. Our review of the resulting order is constrained to determining whether the court abused its discretion. Judicial discretion requires action in conformity with the law on facts and circumstances before the trial court after hearing and consideration. Consequently, the court abuses its discretion if, in resolving the issue for decision, it misapplies the law or exercises its discretion in a manner lacking reason.

**Commonwealth v. Jaynes**, 135 A.3d 606, 615 (Pa.Super. 2016) (brackets and citations omitted).

Generally, evidence of other crimes, wrongs, or acts may not be presented during trial against a criminal defendant as either character or proclivity evidence. Pa.R.E. 404(b); **Commonwealth v. Thompson**, 106 A.3d 742, 752 (Pa.Super. 2014) (citation omitted). However, “mere passing references to prior criminal activity will not necessarily require reversal unless the record illustrates definitively that prejudice results.” **Thompson, supra** at 753. “If evidence of prior criminal activity is inadvertently presented to the jury, the trial court may cure the improper prejudice with an appropriate cautionary instruction to the jury.” **Id.** A cautionary instruction will be deemed appropriate if it is “clear and specific, and must instruct the jury to disregard the improper evidence.” **Id.**

Here, the Commonwealth inadvertently presented portions of Appellant’s statement to the police, wherein he admitted to previously selling marijuana, that the court ruled could not be introduced. Following an objection by defense counsel, the court denied a motion for mistrial and stated that an appropriate curative instruction could be fashioned, noting the jury had previously stated they could not see the print on screen, and that it was only visible for a short period of time. N.T. Trial, 7/18/14, at 174-175; 182-183. Subsequently, the court offered the following curative instruction:

In addition, there’s been a reference throughout the trial to the fact that marijuana was found in the defendant’s home in Collingdale during the police search and the defendant was to return to the Collingdale Police Department at some time with regard to that marijuana. This fact is before you for whatever



value you give it, give the fact, in evaluating the charges here for murder and robbery. It should not be considered by you to determine that the defendant is in general a bad person or is in general a criminal.

If any other reference was made to marijuana or seen on the TV screen in the room in any other context other than that found in the home or stolen from the victim, the jury should ignore it as irrelevant.

N.T. Trial, 7/21/14, at 143.

After review of the record, we find that the trial court did not abuse its discretion in denying Appellant's motion for a mistrial. We agree with the trial court that the Commonwealth's reference to evidence of Appellant's past bad acts was unintentional, and that the information was visible to the jury for only a short time, if at all. Moreover, the court's curative instruction clearly and specifically directed the jury to disregard any evidence related to marijuana, apart from that seized from Appellant's home. The jury is presumed to follow such instructions. ***Commonwealth v. Mason***, 130 A.3d 601, 673 (Pa. 2015) (citation omitted). Since the certified record does not demonstrate that Appellant suffered prejudice from the fleeting reference to his prior acts, Appellant's second claim fails.

In his third issue, Appellant assails the trial court's decision to admit evidence concerning the marijuana and paraphernalia seized from his residence on November 7, 2012. Appellant claims that this evidence was irrelevant, and unfairly prejudiced the jury. We disagree.

Our review of the admissibility of evidence is deferential. “We give the trial court broad discretion, and we will only reverse a trial court’s decision to admit or deny evidence on a showing that the trial court clearly abused its discretion.” ***Commonwealth v. Talbert***, 129 A.3d 536, 539 (Pa.Super. 2015) (citation omitted). An abuse of discretion “is not merely an error in judgment, but an overriding misapplication of the law, or the exercise of judgment that is manifestly unreasonable, or the result of bias, prejudice, ill-will or partiality, as shown by the evidence of record.” ***Id.***

Evidence may be admitted if it is relevant. ***Commonwealth v. Tyson***, 119 A.3d 353, 358 (Pa.Super. 2015). Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence, and the fact is of consequence in determining the action. Pa.R.E. 401. Nevertheless, the court may exclude relevant evidence if its probative value is outweighed by the danger of unfair prejudice. Pa.R.E. 403. Exclusion of evidence “is limited to evidence so prejudicial that it would inflame the jury to make a decision based on something other than the legal propositions relevant to the case[.]” ***Commonwealth v. Kouma***, 53 A.3d 760, 770 (Pa.Super. 2012) (citation omitted).

Here, the court determined that evidence of marijuana and marijuana-related paraphernalia seized from Appellant’s house was probative of the “history and development of the case.” Trial Court Opinion, 4/27/15, at 48. It noted that Appellant had arranged to meet with the victim to purchase a

large amount of marijuana, which he appropriated after shooting the victim and his companion. The court found that the discovery of a large amount of marijuana in Appellant's house only a few weeks after the victim's murder was "highly probative of [Appellant's] involvement in the murder and robbery[.]" **Id.** at 49. Furthermore, it determined the evidence "was not offered for the sole purpose of demonstrating [Appellant's] bad character." **Id.**

The trial court reasoned that any prejudice suffered by Appellant was minimal since the jury was apprised of Appellant's motives on the night in question, and the court's subsequent curative instruction, as discussed *supra*, properly directed the jury in its consideration of the evidence recovered at Appellant's home. **Id.** As the evidence was relevant and its probative value was not outweighed by the danger of unfair prejudice, we discern no abuse of discretion in the court's determination that this evidence was properly admitted. Hence, Appellant's third contention is without merit.

Finally, Appellant raises a challenge to the weight of the evidence. Appellant contends that, other than Appellant's confession to the crime, which he contests as discussed above, and his fingerprints found on the trunk of the victim's car, all the other evidence admitted at trial was merely speculative. He maintains that since there was no eyewitness to the shooting, and cell phone tower records could only place Appellant within three-tenths of a mile to the scene of the crime, there was no real evidence

that Appellant committed the crimes herein. Additionally, he asserts that some of the witnesses offered conflicting testimony.

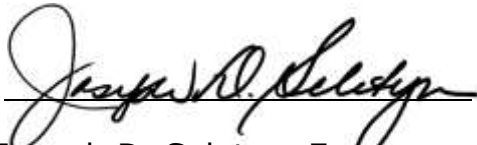
When reviewing a weight-of-the-evidence challenge, we do not actually examine the underlying question; instead, we examine the trial court's exercise of discretion in resolving the challenge. ***Commonwealth v. Konias***, 136 A.3d 1014, 1022 (Pa.Super. 2016) (citation omitted). This type of review is necessitated by the fact that the trial judge heard and observed the evidence presented. ***Id.*** Simply put, "One of the least assailable reasons for granting or denying a new trial is the lower court's conviction that the verdict was or was not against the weight of the evidence and that a new trial should be granted in the interest of justice." ***Id.*** A new trial is warranted only when the verdict is "so contrary to the evidence that it shocks one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail." ***Id.***

Of equal importance is the precept that, "The finder of fact . . . exclusively weighs the evidence, assesses the credibility of witnesses, and may choose to believe all, part, or none of the evidence." ***Id.*** at 1023; ***see also Commonwealth v. Page***, 59 A.3d 1118, 1130 (Pa.Super. 2013) ("A determination of credibility lies solely within the province of the factfinder."); ***Commonwealth v. Blackham***, 909 A.2d 315, 320 (Pa.Super. 2006) ("It is not for this Court to overturn the credibility determinations of the factfinder.").

In considering this issue, the trial court determined that there was an “overwhelming amount of evidence which implicated [Appellant].” Trial Court Opinion, 4/27/15, at 30. It found Appellant’s confession was consistent with the credible testimony of other witnesses, and noted the discovery of Appellant’s fingerprints on the trunk of the victim’s car where the stolen marijuana had been stored. **Id.** The trial court also found Appellant’s version of events incredible. **Id.** As discussed above, Appellant voluntarily confessed to the abovementioned crimes, and ample evidence supported his conviction. Hence, the trial court did not abuse its discretion in ruling the verdict was not so contrary to the evidence as to shock one’s sense of justice.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 8/16/2016